

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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TSM CORPORATION,

Plaintiff,

vs.

Case No. 2:16-cv-2667

ESSEX INSURANCE COMPANY,

Defendant.

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**NOTICE OF REMOVAL**

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The Defendant, Evanston Insurance Company as successor by merger with Essex Insurance Company (incorrectly named as Essex Insurance Company), hereby removes Case No. CT-002296-16 from the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, to the United States District Court for the Western District of Tennessee, Western Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and as grounds for its removal states as follows:

1. On June 6, 2016, the Plaintiff, TSM Corporation, filed a Complaint against the Defendant in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis with Case No. CT-002296-16 (the “State Court Action”). The Defendant is the only defendant in the State Court Action.

2. The Defendant was served with the Complaint and Summons in the State Court Action on July 22, 2016. This Notice of Removal has been filed within thirty (30) days of that date and, therefore, removal is timely pursuant to 28 U.S.C. § 1446(b).

3. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, orders, and documents from the State Court Action which have been served on the Defendant are attached collectively hereto as Exhibit A and incorporated herein by reference as if fully set forth.

4. The Complaint alleges that the Plaintiff is a Tennessee corporation with its principal place of business in Bartlett, Tennessee. The Complaint alleges that Essex Insurance Company has its principal place of business in Glen Allen, Virginia. At the time the Complaint was filed on June 6, 2016, Essex Insurance Company was a corporation incorporated under the laws of the State of Delaware with its principal place of business in Glen Allen, Virginia. Effective June 30, 2016, Essex Insurance Company merged with Evanston Insurance Company. As a result of this merger, Essex Insurance Company is no longer in existence. Evanston Insurance Company is a corporation incorporated under the laws of the State of Illinois with its principal place of business in Illinois. Therefore, there is complete diversity of citizenship between the Plaintiff and the Defendant in this action.

5. The Complaint asserts a cause of action for breach of contract based on the Defendant's denial of an insurance claim made by the Plaintiff. The Complaint alleges that the Plaintiff had an insurable interest under the applicable policy such that payment of the policy limits should have been made in the amount of \$195,000.00. The Complaint alleges that the Defendant's breach of contract was intentional, fraudulent, malicious, and/or reckless which entitles the Plaintiff to recover punitive damages from the Defendant. The Complaint seeks compensatory damages not to exceed \$275,000.00 and punitive damages not to exceed \$1,000,000.00. Therefore, there is well over \$75,000.00 in controversy in this action.

6. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a), and is one which may be removed to this Court by the Defendant pursuant to

the provisions of 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the United States District Court for the Western District of Tennessee, Western Division, is the federal judicial district and division embracing the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis where the State Court Action is pending.

WHEREFORE, the Defendant, Evanston Insurance Company as successor by merger with Essex Insurance Company (incorrectly named as Essex Insurance Company), hereby removes this action to the United States District Court for the Western District of Tennessee, Western Division.

Respectfully submitted,

BRATTON & O'NEAL, P.C.

By /s/ Gregory W. O'Neal

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was mailed, postage prepaid, to Christopher H. Crain, Esq., and Michael G. Derrick, Esq., Shuttleworth Williams, PLLC, 22 N. Front Street, Suite 850, Memphis, TN 38103, this 16<sup>th</sup> day of August, 2016.

/s/ Gregory W. O'Neal

Gregory W. O'Neal